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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013-280

12 **NICOLAS K. GIOFFRE**  
13 **6275 Rancho Mission Road**  
14 **San Diego, CA 92108**

**ACCUSATION**

15 **Registered Nurse License No. 700284**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about March 16, 2007, the Board of Registered Nursing issued Registered  
24 Nurse License Number 700284 to Nicolas K. Gioffre (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on January 31, 2013, unless renewed.  
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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

8. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

1 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
2 without prescription," "Rx only," or words of similar import.

3 (b) Any device that bears the statement: "Caution: federal law restricts this  
4 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
import, the blank to be filled in with the designation of the practitioner licensed to use  
or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully  
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any  
8 controlled substance, except that furnished to a person upon the prescription of a physician,  
9 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

10 10. Section 492 of the Code states:

11 Notwithstanding any other provision of law, successful completion of any  
12 diversion program under the Penal Code, or successful completion of an alcohol and  
13 drug problem assessment program under Article 5 (commencing with section  
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
14 agency established under Division 2 ([Healing Arts] commencing with Section 500)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
15 action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

16 This section shall not be construed to apply to any drug diversion program  
17 operated by any agency established under Division 2 (commencing with Section 500)  
of this code, or any initiative act referred to in that division.

### 18 REGULATORY PROVISIONS

19 11. California Code of Regulations, title 16, section 1444, states:

20 A conviction or act shall be considered to be substantially related to the  
21 qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
22 manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

23 (a) Assaultive or abusive conduct including, but not limited to, those violations  
24 listed in subdivision (d) of Penal Code Section 11160.

25 (b) Failure to comply with any mandatory reporting requirements.

26 (c) Theft, dishonesty, fraud, or deceit.

27 (d) Any conviction or act subject to an order of registration pursuant to Section  
28 290 of the Penal Code.

## COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## DRUGS

13. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business and Professions Code section 4022.

14. Zolpidem Tartrate, sold under the brand name Ambien is a Schedule IV controlled substance as designated by Health and Safety Code section 11507(d)(32), and is a dangerous drug pursuant to Business and Professions Code section 4022.

## FACTS

15. On or about December 12, 2010, Respondent was a passenger in a vehicle that was stopped by the California Highway Patrol. When the officer was speaking with Respondent and the driver, the officer smelled a strong odor of marijuana emanating from the vehicle. In response to an inquiry as to where the marijuana was located in the vehicle, Respondent gave a small container of marijuana to the officer and admitted to the officer that this marijuana belonged to him. Respondent also admitted that he had smoked marijuana the day prior to the arrest and that a small glass smoking device containing what appeared to be burnt marijuana residue belonged to him. Another officer searched the vehicle and located more marijuana and a small unlabeled bottle containing 10 tablets. Respondent further admitted to the officers that the newly discovered marijuana and tablets belonged to him. Respondent was cited and released. The tablets were examined by the Department of Justice, Bureau of Forensic Services and determined by a criminalist to be Zolpidem Tartrate 10mg.

16. On or about May 18, 2011, in the matter of *The People of the State of California vs. Nicolas Kuno Gioffre*, in Mono County Superior Court, case no. MM11000164, Respondent pled no contest to possession of a controlled substance (marijuana) in violation of Health and Safety

1 Code section 11357, subdivision (b). As a result of the plea, the court deferred entry of judgment  
2 and Respondent was ordered to enroll in a drug treatment program pursuant to Penal Code section  
3 1000.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Illegal Possession of Controlled Substances)**

6 17. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
7 Code for unprofessional conduct, within the meaning of section 2762, subdivision (a), in that on  
8 or about December 12, 2010, as described in paragraph 15, above, Respondent was in possession  
9 of a controlled substance and dangerous drug, marijuana and Zolpidem Tartrate without a  
10 prescription in violation of section 4060 of the Code. Such conduct is substantially related to the  
11 qualifications, functions, and duties of a registered nurse.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct)**

14 18. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the  
15 Code for unprofessional conduct in that on or about December 12, 2012, Respondent possessed  
16 controlled substances illegally, as described in paragraph 15, above. Such conduct is  
17 substantially related to the qualifications, functions, and duties of a registered nurse.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
20 and that following the hearing, the Board of Registered Nursing issue a decision:

- 21 1. Revoking or suspending Registered Nurse License Number 700284, issued to Nicolas  
22 K. Gioffre;
- 23 2. Ordering Nicolas K. Gioffre to pay the Board of Registered Nursing the reasonable  
24 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
25 Code section 125.3;
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3. Taking such other and further action as deemed necessary and proper.

DATED: October 11, 2012 for Stacie Bern  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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